

February 3, 2010

BY HAND

The Honorable Denny Chin
United States District Judge
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *The Authors Guild Inc., et al v. Google Inc., No. 05 Civ. 8136 (DC)*

Dear Judge Chin:

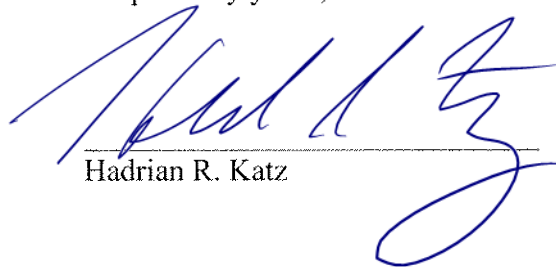
In compliance with the Court's scheduling orders, we filed on January 27, 2010 a second memorandum *amicus curiae* on behalf of the Internet Archive, a competitor of Google Inc., arguing that despite the amendments proposed by the parties, any settlement of this litigation should be limited to willing participants. We respectfully seek leave from the Court to appear at the February 18, 2010 fairness hearing to respond to comments from other participants, and to respond to questions from the bench.

As previously indicated, the Internet Archive is a non-profit educational and research organization that manages a digital library of Internet sites and other cultural artifacts. Much as a paper library, the Archive provides free access to researchers, historians, scholars, and the general public. Among other things, the Archive has established a Web site at www.archive.org which includes a host of free services that benefit the public, the best known of which is Wayback Machine, an archive of some 85 billion pages of historical Internet content that enables users to view and search Web sites as they existed at various dates in the past.

The Archive has made a substantial investment in creating a digital library that would make published books available on line in a manner different from those contemplated by Google, but competitive with them. As the Court may recall, fearing the adverse impact of the proposed settlement, the Archive sought leave at an earlier stage to submit to the Court's jurisdiction as a party defendant.

While the proposed settlement of this matter has been widely discussed from a number of perspectives, we remain of the belief that insufficient attention has been given to the fundamental inconsistencies between the procedures proposed to be followed here, and basic principles of class litigation. As a practitioner who has litigated class cases for over 30 years, as well as one of the editors of *Developments in the Law: Class Actions*, 89 HARV. L. REV. 1318 (1976), I believe that I can be of assistance on these issues. I will not repeat anything that was or could have been included in our written submission, and will yield my time if there appear to be no new points to be addressed.

Respectfully yours,



Hadrian R. Katz

cc: All Counsel